JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. —715

SARAH ALMA WALKER,

Petitioner,

vs.

PAUL D. BROWN, TRIAL JUSTICE,

Defendant

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

GEORGE C. RAWLINGS, JR.,
FRANKLIN & RAWLINGS,
Law Building,
Fredericksburg, Virginia.

JANUARY, 1958.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioner, by her attorney, prays that a writ of certiorari issue to review the judgment entered in this case on October 11, 1957 by the Supreme Court of Appeals of Virginia, denying a writ of error to the Petitioner from a decree entered in the Circuit Court of Arlington County, Virginia, on April 19, 1957.

Opinion Below

Neither the Circuit Court of Arlington County, nor the Supreme Court of Appeals of Virginia, delivered an opinion in this case.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia was entered on October 11, 1957. The jurisdiction of this court is invoked under *28 U. S. C. 1257*. The basis for granting a writ of certiorari herein is the denial of due process of law guaranteed under the Fourteenth Amendment of the Constitution of the United States.

Question Presented

Is a commitment to an insane asylum valid when the alleged incompetent was not given the right to have counsel nor given time to procure witnesses and prepare a defense, even though she specifically requested the same?

Statute Involved

The Petitioner relies on the Fourteenth Amendment to the Constitution of the United States, Section 1, which is as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Statement

The Petitioner, Sarah Alma Walker, was committed to Western State Hospital at Staunton, Virginia, as mentally ill by an order entered in the Trial Justice Court of Arlington County, Virginia, on January 10, 1951. Subsequently, she was removed from the Western State Hospital, after being there several weeks, and taken to DeJarnette State Sanitarium, and on August 29, 1951 she was discharged as recovered. Actually, the Petitioner was not mentally ill at the time she was committed. A copy of the Petition for Commitment, Interrogations and the Certificate of Discharge are included as a part of the record, as Exhibits A, B and C.

When the warrant issued by the Substitute Trial Justice of Arlington County based upon the Petition of John R. Walker, husband of the Petitioner, was executed by the Deputy Sheriff, the Petitioner was not given a copy thereof, nor was she told what was contained in the same. Instead, she was asked to dress and go down to the Court House to talk to the Judge, and she was never told the nature of the proceedings against her until she arrived and was confronted with two doctors alone without the presence of the Trial Justice or the Substitute Trial Justice.

When the Petitioner learned of the nature of the proceedings against her she urgently requested that she be given time to prepare her defense and that she be allowed to obtain legal counsel to aid her in proving that she was not mentally ill, all of which was denied.

On January 13, 1956 the Petitioner filed her Petition (App. pp. 12-15) in the Circuit Court of Arlington County praying that the said commitment order be declared null and void and of no effect, that a copy of the order adjudicating the same be filed with the commitment papers in the original commitment proceedings. H. Bruce Green, Clerk of the Circuit Court of Arlington County, and Paul D. Brown, Trial Justice of Arlington County, who signed the order of commitment when he was substituting Trial Justice, were made parties defendant.

On February 2, 1956 both defendants filed demurrers to the petition. Thus, all of the allegations set forth in the origiral petition were admitted, and they form the basis of this statement.

On Monday, July 16, 1956, the demurrer was argued before the Court which resulted in an order sustaining the demurrer as to the Defendant, H. Bruce Green, Clerk, and a continuance of the case as to the Defendant, Paul D. Brown, Trial Justice, pending the filing of a memorandum of authorities by counsel for the parties.

On April 19, 1957, an order was entered in the cause sustaining the demurrer as to Paul D. Brown, Trial Justice and granting leave to the Petitioner to amend her petition within twenty-one days. The order further provided that the cause should be dismissed if no amendment were filed. The Petitioner did not amend her petition and the order of dismissal became final.

On August 16, 1957 the Petitioner filed her petition for a writ of error in the Supreme Court of Appeals of Virginia, and on October 8, 1957 the said petition was heard in oral argument by three of the justices thereof. On October 11, 1957 an order was entered in the case denying the petition for a writ of error.

The denial of due process of law to the Petitioner was first raised by her petition filed in the Circuit Court of Arlington County (App. pp. 12-15) wherein she alleged in Paragraph 12 that "she was deprived of her freedom and rights without due process of law as guaranteed her in the Constitutions of the United States of America and the Commonwealth of Virginia." The Trial Court did not specifically rule on this contention of the Petitioner, but entered a final order sustaining a demurrer to her Bill and dismissing the cause (App. pp. 15-16).

When the Petitioner filed her petition in the Supreme Court of Appeals of Virginia for a writ of error, among the questions cited by her as being involved in the appeal was the eighth question appearing on page 3 of said petition, which is as follows: "Is a commitment valid when the alleged incompetent was not given the right to have counsel, nor given time to procure witnesses, even though she specifically requested the same?" In denying the Petitioner's petition for a writ of error the Supreme Court of Appeals of Virginia did not issue an opinion, but merely refused to grant the writ, which indicated that it agreed with the decision of the lower Court. See the order

of the Supreme Court of Appeals of Virginia entered on October 11, 1957 (App. pp. 16-17).

Reasons for Granting the Writ

I

The point of law presented by the decision of the Court below has not heretofore been directly decided by this Court.

In the case of *Powell* v. *Alabama*, 287 U.S. 445, 71, the Court held that the failure of the Trial Court to give the defendant "reasonable time and opportunity to secure counsel was a clear denial of due process," but the question involved there was the right of defendants in a criminal case to have counsel and time to prepare their defense. Again, in the case of *Simon* v. *Craft*, 182 U.S. 427, 436, it was held that due process of law was not denied the subject of a lunacy commission because she was not present in Court during the trial of her competency, since she had received ample notice of the trial, but the Court was not presented with, and did not pass upon the right of an alleged lunatic to have time to secure counsel and an opportunity to prepare his or her case. For some reason, this precise question has never been, so far as counsel can ascertain, directly ruled upon by this Court.

II

The failure to allow an alleged incompetent to have counsel and to have time to procure witnesses and prepare a defense is a denial of due process of law, guaranteed by the Fourteenth Amendment.

While the cases dealing with the due process of law required for a valid commitment are quite clear in guaran-

teeing notice and an opportunity to be heard, there is less clarity concerning the right of a person to counsel in such a proceeding. The case of *State* v. *Billings* (1894) 55 Minn. 467, 57 N.W. 795, 42 Am. St. Rep. 525, which case has been followed and quoted in a number of subsequent decisions in various jurisdictions, goes as far as any case in supporting the point raised by the Petitioner herein. In that case it was held that valid proceedings to commit one as insane require a notice and opportunity to be heard before judgment. It was further stated therein that "there must be a trial before determination as to insanity and an opportunity to produce witnesses and evidence." See *Masters* v. *Minnesota*, 216 Minn. 553; 13 N.W. 2nd 487; 158 A. L. R. 1210; *In re Allen* (1909) 82 Vt. 365, 17 Atl. 1078, 26 L. R. A. 232; *In re Bogett* (1904) 136 N. C. 415, 58 S. E. 789; 103 Am. St. Rep. 944; 67 L. R. A. 972; *In re Lambert* (1901) 134 Calif. 626; 66 Pacific 851, 55 L. R. A. 856; 86 Am. St. Rep. 296.

The decision most directly in point is *In re Jewell* 26 N. J. Eq. 298, which is quoted in 28 *American Jurisprudence*, *Insane and Other Incompetent Persons*, *Section 21* page 669, as follows: "A refusal to adjourn an inquisition for a reasonable time, to enable the party charged with lunacy to make necessary preparation for trial, where the insufficiency of the time available to him is clearly evident from the date of the hearing, is ground for setting aside the inquisition."

The whole tenor of the above mentioned decisions indicate that a person is entitled to an adequate opportunity to prepare his defense. The Petitioner's position would be much weaker here if the Virginia commitment statute, (*Section 37-61, Code of Va. 1950* App. page 11) had required that she be given several days or at least twenty-four hours notice of the commitment proceeding, during which time she

would have had the opportunity to employ counsel and prepare her defense. The first notice an alleged lunatic has of the proceedings against him under the statute is the presence of the officer with a warrant giving him authority to produce the alleged lunatic forthwith before the lunacy commission which may sit upon his sanity with no required lapse of time. Without some delay afforded the subject, it is possible that a person could be snatched up and committed within a matter of minutes. If the presence of the supposed lunatic is all that is necessary to accord an adequate hearing, it could never be argued that an attorney is needed in any case to present his client's cause for it could always be said that the client could have an adequate hearing by representing himself. It would be folly to say that a person apprehended by an officer of the law and presented to a lunacy commission would always have the presence of mind and ability to combat a wrongful commitment. The main reason that due process of law should be rigidly required in commitment cases is to prevent conniving relatives and other persons from having a person committed, either because they wanted to get control of his or her property, or did not want to be burdened further with the obligation to care for the person.

It is interesting to note that the statutes of West Virginia require the appointment of a guardian ad litem as part of the commitment procedure. See *Section 5629 Michie's W. Va. Code 1949.* In addition, there is provision for the appointment of counsel in the case of the commitment of inebriates in Virginia. See *Section 37-164 Code of Virginia, 1950* and also in the procedure for sexual sterilization, *Section 37-240 Code of Virginia, 1950.* It is hard to see how it could be argued that sexual sterilization and the commitment of inebriates are so much more important proceedings than the commitment of insane or mentally ill persons as to require the appointment of counsel for

the former, while the latter can take place without the benefit of counsel. It is true that the State exercising its police power has the power to enact statutes and adopt procedures which are for the protection of the general public, but it is the province of the courts to prevent the State under the guise of using its police power from usurping the individual rights of its citizens. The Fourteenth Amendment to the Constitution of the United States is broad enough and the guarantee of due process of law thereunder is strong enough to accomplish this end. However, in our present modern world with the increasing stresses of daily life, the importance of a commitment procedure providing complete due process of law becomes increasingly important and the Petitioner strongly urges the Court to establish a guidepost for the future and to aid her, the Petitioner, in eliminating a wrongful commitment in her particular case.

III

The Petitioner in this case was denied due process of law.

The whole subject of due process of law is so dependent upon human rights that the final rule in any particular case is wrapped up in the opinion of the Court as to the real justice involved in a given situation. See *Betts* v. *Brady*, 316 U.S. 455, 462. Here the Petitioner was summarily aroused from bed by the Deputy Sheriff and told to dress and go down to Court to talk to the Judge. She was not told what the talk was to be about, nor the nature of the proceedings. She was not even shown or served with a copy of the summons. The first notice that she had of a commitment proceeding was the beginning of the proceedings in the presence of the two doctors. At this point the Petitioner requested time to secure counsel and to prove that she should not be committed, but was

denied this right. She was asked very few questions, but the doctors on the commission seemed to base their opinion upon a written report submitted by a third doctor who was not present at the commission and who had only seen the Petitioner one time. It is true that the Petitioner had the right of an appeal if she noted the same and perfected it within fifteen days (*See Section 37-71.1, Code of Virginia, 1950*, App. page 11) but without the assistance of counsel and having been committed to an insane asylum there is small wonder that the Petitioner was not able to avail herself of this right. The line between sanity and insanity is very often a thin one and difficult for the physician as well as the layman to determine, and it is submitted that the determination of one's sanity with a possible resulting incarceration perhaps for life, warrants a more careful consideration than was given the Petitioner in this particular instance. When viewed in the totality of the facts surrounding Petitioner's commitment here, it is submitted that a clear denial of due process of law was involved.

Conclusion

This case brings before the Court one additional area where protection and safeguards are needed to preserve an individual's rights guaranteed under the Constitution of the United States. Here is a situation not previously presented to this Court for a direct ruling and here is a situation, no doubt repeated in many instances throughout the country, which urgently needs attention and clarification by a voice of authority such as this Court can give. Here is a citizen destined to live out her life with an illegal and void commitment on her record with the resulting effect on her ability to earn a living, unless she obtains the relief prayed for in her original bill.

Therefore, it is respectfully submitted that this Petition for a writ of certiorari should be granted.

Respectfully submitted.

GEORGE C. RAWLINGS, JR.,
Law Building, Fredericksburg, Va.,
Counsel for Petitioner,
Sarah Alma Walker.

APPENDIX

Section 31-61 Code of Virginia, 1950. Judge or justice to issue warrant on allegation and complaint of citizen. Any circuit or corporation judge, or any trial justice, when any person in his county or city is alleged to be mentally ill, epileptic, mentally-deficient, or inebriate, upon the written complaint and information of any respectable citizen, shall issue his warrant, ordering such person to be brought before him. The judge or justice may issue the warrant on his own motion.

In any county in which no trial justice resides, the judge of the circuit court may appoint one justice of the peace in such county to assist him in carrying out the duties and powers conferred by this title. Each justice of the peace so appointed by the judge shall serve under the supervision and at the pleasure of the judge making the appointment and shall be vested with all the powers conferred by this title on trial justices. (Code 1919, Section 1017; 1938, p. 361; 1940, p. 395; 1950, p. 902.)

Section 37-71.1, Code of Virginia, 1950. Appeal from commitment. Any person found to be mentally ill, mentally-deficient, inebriate or epileptic by a commission shall within fifteen days thereafter have the right of appeal to the court of record of the county or city to which appeals in civil cases from any court not of record in the county or city are taken. Such appeals shall be tried in the county or city in which the commission is held. From the judgment of the court on such appeal a person taking the appeal shall have an appeal of right to the Supreme Court of Appeals. Pending disposition of either appeal the person taking the appeal shall be held in such place as the commission has designated in its order of commitment or, in the discretion of the Commissioner, such other place as he deems appropriate. In the case of appeals to a court

of record the procedure thereon shall conform to appeals in civil cases and the person taking the appeal shall have the right to demand a jury of seven. Appeals to the Supreme Court of Appeals shall be perfected as prescribed by law or in such manner as the Supreme Court of Appeals may prescribe." (1950, p. 904.)

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

SARAH ALMA WALKER

vs.

H. BRUCE GEE, CLERK, CIRCUIT COURT OF ARLINGTON COUNTY, VA.; PAUL D. BROWN, TRIAL JUSTICE OF ARLINGTON COUNTY, VIRGINIA, COURT HOUSE, ARLINGTON, VIRGINIA

To: The Honorable Judge of Said Court:

Your Petitioner, the said Sarah Alma Walker, respectfully represents unto Your Honor as follows:

(1) That by order entered in the Trial Justice Court of Arlington County on January 10, 1951, your Petitioner was ordered committed to Western State Hospital at Staunton, Virginia, as mentally ill; and

(2) That subsequently your Petitioner was taken to the said hospital and a few weeks later removed to DeJarnette State Sanitarium, where on August 20, 1951, your Petitioner was discharged as recovered; and

(3) That in fact your Petitioner was not mentally ill at the time that she was committed and that the commitment proceedings and order were illegal and void; and

(4) That your Petitioner's husband, John R. Walker, who is now deceased, in fact, never swore to the Petition for the commitment, although his name is signed to the Petition and the Petition states that it was sworn to by him; and

(5) That a warrant based on the aforesaid Petition for commitment was never served on your Petitioner, but she was merely told to dress and go down to the Court House to talk with the Judge, and was never told the nature of the proceedings until she arrived and two doctors confronted her; and

(6) That your Petitioner urgently requested time to prove that she should not be committed and to secure counsel but was denied the same by the commission; and

(7) That the doctors, Homer W. Boysten and J. H. Walton, asked very few questions of your Petitioner but based their decision on a written report from Dr. R. C. Burnham who had only seen your petitioner once; and

(8) That although the Substitute Trial Justice was in the building and readily available he was not present during the commission but merely came in at the completion of it; and

(9) That the depositions of all witnesses, physicians and so forth in the said commitment proceedings were not taken under oath and transcribed in writing as required by Section 37-65 of the Code of Virginia, 1950; and

(10) That since the proper procedure set forth in title 37 chapter 3 of the Code of Virginia was not followed by the Court and Commission in committing your petitioner, the whole procedure was illegal and therefore null and void and of no effect, and

(11) That even though the proper procedure were followed the procedure was illegal and null and void and of no effect because your petitioner was denied the right and time to procure counsel and secure witnesses to show her sanity, which was an unconstitutional proceeding, wherein

your petitioner was denied her rights and freedom without due process of law as guaranteed to her under the constitutions of the United States of America and the Commonwealth of Virginia; and

(12) That the whole commitment proceeding wherein your petitioner was committed as aforesaid was unconstitutional and thereby null and void and of no effect because your petitioner was not given a chance to prove her sanity before a jury, whereby she was deprived of her freedom and rights without due process of law as guaranteed her in the constitutions of the United States of America and the Commonwealth of Virginia, as aforesaid; and

(13) That even though your petitioner was discharged from the Sanitarium within seven months from the time of her commitment and has had no trouble since that time the record of the illegal and unconstitutional commitment is an undue blot on your petitioner's record and seriously hampers her in procuring employment; in fact, in certain cases prevents her from obtaining desirable employment for which she is otherwise qualified; and

(14) That there is no other forum to which your petitioner may appeal save in this Court of Equity since she has no adequate remedy at law to correct the situation and protect her rights.

WHEREFORE, your Petitioner prays that this honorable Court will take jurisdiction in this cause and declare the aforesaid commitment order to be illegal and null and void and of no effect and direct that a copy of an order adjudging the same be filed with the said commitment papers and that your petitioner be granted such other relief as the Court may desire and to equity may seem just.

SARAH ALMA WALKER,
Petitioner.

By counsel:

FRANKLIN & RAWLINGS,
Attorneys at Law
Law Building
Fredericksburg, Virginia

By GEORGE C. RAWLINGS, JR.

IN THE CIRCUIT COURT OF ARLINGTON COUNTY VIRGINIA

In Chancery No. 8418

SARAH ALMA WALKER,
Petitioner,

vs.

H. BRUCE GREEN, CLERK; PAUL D. BROWN, TRIAL JUSTICE,
Defendants

ORDER

THIS DAY, came the Petitioner, Sarah Alma Walker, by counsel and Paul D. Brown, defendant, by William J. Hassan, Attorney for the Commonwealth; and

IT APPEARING TO THE COURT that this case has been fully argued on the pleadings, memorandum of authorities and

exhibits made a part of the record of stipulation, and the Court being of the opinion that the demurrer filed by defendant, Paul D. Brown, should be sustained, it is therefore

ADJUDGED, ORDERED AND DECREED that said demurrer is sustained, with leave to Petitioner to amend within 21 days of this order, and that if amended pleadings are filed, then defendant, Paul D. Brown should file responsive pleadings thereto within 21 days of the filing of such amended pleadings, and that if no amended pleadings are filed within 21 days of this Order, then this cause shall stand dismissed.

WILLIAM D. MEDLEY,
Judge.

GEORGE C. RAWLINGS, JR.,
FRANKLIN & RAWLINGS,
Attorneys for Petitioner.

WILLIAM J. HASSAN,
Attorney for the Commonwealth,
and Defendant Paul D. Brown

IN THE SUPREME COURT OF APPEALS HELD IN THE SUPREME COURT OF APPEALS BUILDING IN THE CITY OF RICHMOND, VIRGINIA, THE 11th DAY OF OCTOBER, 1957

The Petition of Sarah Alma Walker for an appeal from a decree entered by the Circuit Court of Arlington County on the 19th day of April, 1957, in a certain proceeding then therein depending, wherein the said Petitioner was Plaintiff and H. Bruce Green, Clerk of the Circuit Court of Arlington County, and another, were Defendants, having been maturely considered and a transcript of the record

of the decree aforesaid seen and inspected, the Court being of opinion that the said decree is plainly right, doth reject said Petition, and refuse said appeal, the effect of which is to affirm the decree of the said Circuit Court.

(8525-8)